130 Iowa 313. If the appellant's abstract or record on appeal might by proper condensation be shortened, the court may reduce the costs. *Haughton* v. *Bilson,* 84 Kan. 880. There are two ways in which the courts restrict costs: they either refuse any costs on the defective record or make an arbitrary reduction for unnecessary matter. The cases uniformly hold that where the whole record or brief is unnecessary, or where it is so defective that it must be stricken from the files, or where an additional brief or record is required because of the prevailing party's own negligence, no costs whatever are allowed therefor. *In re Wetmore,* 6 Wash. 271; *Hankwitz* v. *Barrett,* 143 Wis. 639; *Huntley* v. *Chicago R. Co.,* 142 Iowa 697; *Treat* v. *Hiles,* 76 Wis. 367; *Mann* v. *Hefter,* 128 N. Y. Supp. 663; *Finlen* v. *Heinze,* 28 Mont. 548; *Dufur* v. *Paulson,* 110 Wis. 281; *Bonato* v. *Peabody Coal Co.,* 143 Ill. App. 163. The courts also uniformly hold that where a necessary brief or record contains unnecessary matter and the court allows it to remain on the files, deduction will be made only to cover the costs on that part which is unnecessary. *Cobb* v. *Hartenstein, supra; Wilson* v. *Pontiac Railway Co., supra; Lever* v. *Thielke,* 115 Wis. 389; *Spang* v. *Robinson,* 24 W. Va. 327. See 5 STAND. CYC. OF PROC. 1004.

DEATH—CIVIL ACTION—INTERPRETATION OF "CHILD."—A statute gave a right of action in case of death by wrongful act to the child or children of the deceased. Plaintiff's father and mother were married in accordance with the tribal ceremonies of the Tunica Indians, of which tribe they were members, but the law of Louisiana does not recognize such marriage. Plaintiff's mother having been killed, through the alleged negligence of the defendant, he brought action under the statute. *Held,* no cause of action, for the word "child" in the statute means legitimate child. *Youchican* v. *Texas & P. Ry. Co.* (La., 1920), 86 South. 551.

Authority for the above view is found in *Lynch* v. *Knoop,* 118 La. 611; *McDonald* v. *Southern Ry. Co.,* 71 S. C. 352; *Good* v. *Towns,* 56 Vt. 410; *Harkins* v. *Philadelphia & Reading Ry. Co.,* 15 Phil. 286; *Dickinson* v. *Ry. Co.,* 2 H. & L. (Exch.) 735. In most of these cases the position of parent and child is reversed, but the same interpretation prevails and the mother is denied recovery for the death of her illegitimate child. In *Galveston, H. & S. A. Ry. Co.* v. *Walker,* 48 Tex. Civ. App. 52, two illegitimate children recovered for the death of their mother, but the court seems to rely somewhat on a statute abolishing the rule that statutes in derogation of the common law are to be strictly construed. In *Muhl's Adm'rs* v. *Mich. South. Ry. Co.,* 10 Ohio St. 272, the court clearly indicates that illegitimacy should not bar plaintiff's recovery, but such construction was not absolutely necessary to the disposal of the case. There is considerable solid authority, however, for the doctrine that under such statute the mother can recover for the death of her illegitimate child. *Security Title & Trust Co* v. *West Chicago St. Ry. Co.,* 91 Ill. App. 332; *Marshall* v. *Wabash Ry. Co.,* 120 Mo. 275. The statement of the court to the contrary when this last case was before the Federal court, 46 Fed. 269, is pure *dictum.* In *Kenney* v. *Seaboard*

Air Line Ry. Co., 167 N. C. 14, affirmed in 240 U. S. 489, plaintiffs recovered as next of kin for the death of their half-brother, an illegitimate son of their mother. In nearly all American jurisdictions, including all states from which citations are given above, except South Carolina, a bastard can inherit from his mother, and *vice versa*. The sole justification of the instant case would seem to be in precedent. It is out of harmony with the present tendency in the legal attitude toward bastards, in which tendency common law jurisdictions are more tardy than other civilized countries. See 16 COL. L. REV. 698. The old common law policy of preventing illicit intercourse by making neither party, and neither party's property, responsible for the support and education of the innocent product thereof, hardly commends itself to reason or sense of justice. The line of authorities last noted above shows one more step toward the time when the law will cease to penalize the child for the wrong of its parents, and this step is taken by decision, not special legislation. For the most progressive American legislation in this field see LAWS OF NORTH DAKOTA, 1917, page 80.

DEEDS—ATTEMPTED DELIVERY IN ESCROW TO THE GRANTEE.—Pursuant to a contract to marry her so soon as he lawfully might P hands to C, a recent divorcee, a deed to certain land—said deed being absolute on its face—with the oral stipulation that the deed should not be recorded or be operative unless P should fail to marry C. A third party has the deed recorded contrary to the express wish of C. P marries C. C dies, leaving as her heirs-at-law P and B, daughter by her first husband. B dies, leaving as her heirs-at-law D^1, her husband, and D^2, her father (C's first husband). P brings bill in equity against D^1 and D^2 to remove cloud from title to land described in the deed. *Held,* since neither P nor C intended the deed as a presently operative conveyance, there was neither delivery nor acceptance and title did not pass. *Mitchell* v. *Clem* (Ill., 1920), 128 N. E. 815.

In a case very similar as to delivery the stipulation was that the deed should not be operative until the purchase price should be paid; no payments were made; the grantor retook possession and the unrecorded deed was destroyed. A judgment creditor of the grantee sought to attach the land. The court held that by the handing over to the grantee of the deed absolute on its face title passed regardless of the oral condition. Creditor's right was, of course, subject to the grantor's prior lien for the purchase price. *Bank* v. *Anderson* (Kentucky Court of Appeals, 1920), 225 S. E. 361. Both courts announce the rule that a delivery cannot be made to the grantee in escrow. The Illinois court has held very consistently that such a delivery is absolute. *Blake* v. *Ogden*, 223 Ill. 204, and cases cited therein. But confronted with a hard case, the court finds its way out by saying that there was no delivery at all. This seems to be giving effect to the oral condition, for one can hardly doubt that the court would have found sufficient delivery if the grantor had died without marrying the grantee. It is suggested that the court might frankly admit that it will give effect to oral conditions when they can be clearly proved, as did the Supreme Court of Virginia recently.